

REMARKS

In paragraph 2 of the office action, the examine indicates that a request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R 1.17(e) was filed for this application. The applicant disagrees. In a telephone interview on May 10, 2004, the examiner agreed to withdraw the finality of the rejection. The applicant respectfully submits that the office action is non-final and not an action on an RCE.

In paragraph 4 and 5, the examiner rejects claims 1-43 under 35 U.S.C. 103(a) as being unpatentable over US 6,314,502 (Gulick) in view of 6,301,615 (Kutcher).

The examiner has not cited a motivation to combine the references -- Karsten Mfg. Corp. V. Cleveland Gulf Co. 242 F.3d 1376, 13858 U.S.P.Q.2d 1286, 1293 (Fed. Cir. 2001) "...there must be some suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in the way that would produce the claimed invention". The applicant respectfully requests the examiner identify the motivation in the cited references.

Gulick is directed to managing shared memory between partitions. Kutcher is directed to filtering performance information from diverse performance monitors such that a consistent view of monitored performance can be presented to the user. Even if a motivation existed to combine the patents, the result would provide a system for presenting a consistent view of monitored systems that have a shared memory capability. Such a system would not provide any sort of partition manager for allocating resources or resource balancing directives much less allocating resources by a partition manager according to throughput information as shown in the claims.

The examiner says that as per claim 1, 15, 29 and 43, Gulick "discloses a method in a computing system having a first partition including a first operating system and a second partition including a second operating system, the method comprising the steps of:

a) conveying first partition (throughput) information from said first partition to a partition manager (shared window, col 2, lines 62-64, col 3, lines 6-35, col 4, lines 40-42);"

The applicant disagrees. The references cited by the examiner are directed to communicating between partitions by way of shared memory in order to improve throughput performance of such inter partition communications. The reference is silent on a partition manager according to the present invention as shown in the specification which says at least in part "The partition resource manager task is comprised of cooperation of Workload Manager running in a partition, obtaining throughput information from other workload managers... In another partition in communication with a Hypervisor, responsible for adjusting partition resource allocation..." (Page 30, lines 4-10). The references cited are silent on any entity managing workloads of any sort much less managing workloads based on performance (throughput information) of a partition. The specification supports the claim in Fig. 13, 14 and page 30, lines 14 - page 33 line 12 wherein throughput information ("velocity" metric) derived from I/O packets (page 31 lines 23-24) or CPU utilization (page 31 lines 25-26) of an operating system is used to adjust resources page 31 lines 8-11.

The examiner says Gulick teaches " b) creating in said partition manager (program code, col 3, lines 17-20), resource balancing directives said resource balancing directives based on said first partition (throughput) information (col 3, lines 25-35, col 52, lines 3-45); and" The applicant disagrees. The references merely discuss coordination of partitions in accessing

a shared portion of storage. As previously stated, Gulick is silent on any sort of partition manager according to the present application. Furthermore, the references in Gulick do not discuss resource balancing directives\_based on performance of any sort much less resource balancing directives based on a partitions throughput information. The examiner's elimination of "throughput" in partition throughput information, removes a significant element of the present invention, that of resource allocation responsive to performance information of a partition.

The examiner says Gulick teaches " c) allocating resources to said first partition by the partition manager according to the resource balancing directives (col 52, lines 3-45). The applicant disagrees. The cited reference does not discuss a partition manager or resource balancing directives as shown in the application and claims. The Gulick reference discusses responsibilities of a Master Partition. The Master Partition "has added responsibilities for managing the shared memory window..." (col 42 lines 6-7). The responsibilities are for managing the shared memory and managing shared memory communications of partitions via the shared memory. Gulick is silent on allocating resources to a partition by a partition manager and resource balancing directives employed by a partition manager as shown in the specification and claims.

The examiner acknowledges that Gulick is "silent about conveying throughput information" and asserts that "Kutcher discloses throughput information". The applicant disagrees.. Kutcher is directed to providing measurement from multiple systems to a user. Kutcher directes throughput information to be viewed by a user and is silent on providing such throughput information to be used by any load balancer much less "resource balancing directives based on said first partition throughput information" as shown in the claims.

The applicant submits that claims 1, 15, 29 and 43 are in condition for allowance, which allowance is respectfully requested.

The applicant respectfully reminds the examiner that according to the USPTO's "Examination Guidelines for Computer-related Inventions" (Final version), II. C. Page 4 final paragraph, "Office personnel must rely on the applicant's disclosure to properly determine the meaning of terms used in the claims" Reference *Markman v. Westview Instruments*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (in banc), cert. granted, 116 S. Ct. 40 (1995). Therefore, meaning of terms such as "throughput information; resource balancing directives, partition manager; allocating resources and workload manager" of the present invention must be interpreted according to the present application.

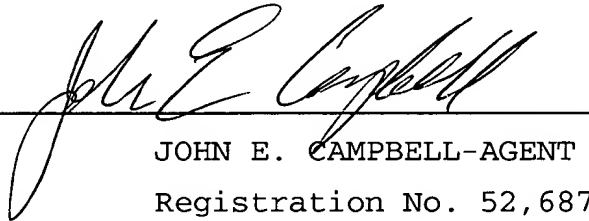
The applicant submits that claims 2-8, 10-22, 24-36 and 38-42 are in condition for allowance as they depend on allowable claims, which allowance is respectfully requested.

The applicant submits that claims 5-8, 10-14, 19-22, 24-28, 33-36 and 38-42 are in condition for allowance as they depend on allowable amended claims 1, 15, 29 respectively, which allowance is respectfully requested.

It is respectfully submitted that the application is now in condition for allowance, which allowance is respectfully requested.

RESPECTFULLY SUBMITTED

BY:

A handwritten signature in cursive script, appearing to read "John E. Campbell", is written over a horizontal line.

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